(d) whether it is a fact that above disinvestment proposal is controversial to Government's announcement the Parliament; and

(e) Whether any notification under section 620 of the Companies Act was issued at the time of nationalisation of companies and whether the assent of Parlament is required before disinvestment?

THE MINISTER OF DISINVESTMENT (SHRIARUN SHOURIE) (a) Yes, Sir.

(b) Government has decided to disinvest 35.2% of equity shares of BPCL through offer for sale to public in the domestic and international market (including ADR/GDR) etc. in one tranche and 34.01 % of the equity shares of HPCL through strategic sale. In addtion, 5% shares in HPCL and BPCI are to be offered to the employees through Employees Share Purchase Scheme (ESPS).

(c) No, Sir. It is the policy decision of the Government that Central Public Sector Undertakings and Cenral Governmetn owned Cooperative Societies, (i.e. where Government's ownership is 51% or more), are not permitted to participate in the disinvestment of other PSUs as bidders.

(d) No, Sir.

(e) Notifications under ESSO (Acquisition of Undertakings in India) Act, 1974, Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd. and of the undertakings in India of Caltex (India) Ltd.) Act, 1977 and Burmah Shell (Acquisition of Undertakings in India) Act, 1976 were issued by the Government of India. Parliamentary Legislation or Parliamentary sanction or approval is not necessary to effectuate the in principle' policy decision of disinvestment in HPCL and BPCL. It is open to Government of India in bona-fide exercise of its executive power.

Legal opinion for resale of Centaur Hotel, Mumbai

1612. SHRI SANJAY NIRUPAM: Will the Minister of DISINVESTMENT be pleased to state:

(a) whether Government had sought for legal opinion regarding the resale of Centaur Hotel, Mumbai Airport from Attorney General and other Government authorised solicitors;

(b) if so, the details thereof;

(c) whether Government have since received any legal opinion in this regard; and

(d) if so, the details thereof and Government's response thereto?

THE MINISTER OF DISINVESTMENT (SHRIARUN SHOURIE): (a) to (d) The Government had sought the advice of the Attorney General of India (AG) on the sale of its entire shareholding by Batra Hospitality Private Limited (BHPL) to Sahara India Group (SIG) and the subsequent change in the name of the company to Sahara Hospitality Private Limited (SHPL). The advice rendered by the Attorney General of India in the matter was as follows:—

With respect to the question whether the provisions of the Article 13.4 of the Agreement to Sell between BHPL and Hotel Corporation of India (HCI) have been violated because of the transfer of the entire shareholding by the then shareholders of BHPL to SIG without the consent of HCI, the Learned AG has opined that it is a well-established principle that a company is a body corporate distinct from its members. In other words a company is a juristic person and is distinct from its shareholders. Transfer of the entire shareholding by the then shareholders of BHPL to the SIG does not in Law amount to an "assignment". BHPL is a llegal entity separate from the shareholders. Even after the transfer of shareholding, BHPL is obliged to perform the terms and conditions of the Agreement to Sell. There has been no assignment by BHPL of the "benefits or burdens" of the Agreement to Sell to SIG. Consequently, there **was** no obilgation on BHPL to obtain any prior consent as contemplated by Article 13.4 of the Agreement to Sell and there has been no breach by BHPL.

As regards the issue of whether the provisions of the Article 24 of the Lease Agreement between BHPL and Airports Authority of India (AAI) have been violated because of the transfer of the entire shareholding by the then shareholders of BHPL to SIG without the consent of AAI, the Learned AG has opined that Article 24 of the Lease Agreement requires prior written approval of the Lessor if the Lessee, i.e. BHPL desires to mortgage assign, transfer or sublet the leased premises. Transfer of

shareholding of a company does not amount to either a mortgage, assignment, transfer or sub-leasing of the land which has been leased. Consequently, here was no obligation to obtain prior approval in writing from the Lessor, i.e. AAI. Hence, there has been no breach of the Lease Agreement.

In response to the question of whether BHPL has violated the provisions of the Agreemetn to Sell and the Lease Agreement because of change of name of the company to SHPL, the Learned AG has advised that it needs to be borne in mind that change of name does not affect the entity of the company or its countinuity as the same entity. The company remains the same corporate body and the change does not affect any of its rights or obligations or render defective any legal proceedings by or against it. In the AG's view, this legal position is reinforced by Section 23(3) of the Companies Act, 1956 which reads as under—

> "The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name."

As regards the question of whether any action can be taken against BHPL and SHPL to pierce the corporate veil and taking remedial actions for cancelling the Agreements, the Learned AG has advised that there is no matrerial which establishes fradulent conduct or any illegality in the transactions and therefore, the doctrine of piercing the corporate veil would be inapplicable. Hence in the AG's opinion, cancellation of the agreements would not be warranted.

Disinvestment of Profit Making PSUs

1613. SHRI S.S. AHLUWALIA: Will the Minister of DISINVESTMENT be pleased to state:

(a) whether it is a fact that Government have disinvestment several profit earning Undertakings; and

(b) the details of the disinvestment made, year-wise, in profit earning PSUs since 1998 together with the details of their respective net asset value and accumulated surplus with each entity as in the years of